

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 23-20727-CIV-RKA

RYAN BRESLOW, ET AL.,	. Miami, Florida
	. March 28, 2023
Plaintiff,	. 3:32 p.m.
	.
v.	.
	.
MARK PHILLIPS, ET AL.,	.
	.
Defendant.	.
.

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Transcript of Preliminary Injunction Hearing had
before the Honorable Roy K. Altman,
United States District Judge.

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

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APPEARANCES:

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1 TUESDAY, MARCH 28, 2023, 3:32 P.M.

2 *(The Judge entered the courtroom)*

3 *(Discussion had off the record)*

4 THE COURT: All right. Let's call the case.

5 ROOM CLERK: Calling case 23-20727, Breslow,
6 et al., vs. Phillips, et al.

7 Counsel, please state your appearances, starting with
8 the plaintiff.

9 MR. BERG: Christopher Berg on behalf of Plaintiffs
10 Breslow, Fine, and Gordon.

11 THE COURT: Good afternoon, sir.

12 MR. BERG: Good afternoon, Your Honor.

13 MR. SINGH: Good afternoon, Your Honor. Nitoj Singh
14 on behalf of Defendants Mark Phillips and Ben Reed.

15 THE COURT: Good afternoon.

16 You all may be seated.

17 All right. We're here on the plaintiffs' motion for a
18 preliminary injunction.

19 It's your burden.

20 MR. BERG: Yes, Your Honor.

21 Since the filing of the TRO application, plaintiffs'
22 case has only gotten stronger. Almost every day we're finding
23 new evidence. This case is about --

24 THE COURT: I think I issued a TRO, right?

25 MR. BERG: Yes, Your Honor.

1 THE COURT: All right. So we're here on the
2 preliminary injunction.

3 MR. BERG: Yes, Your Honor.

4 This case is about disloyal agents.

5 THE COURT: I don't need argument. I read all the
6 briefing. I just need evidence.

7 MR. BERG: Yes, Your Honor. The evidence is,
8 defendants' conduct regarding the Law Office of Reed Yurchak is
9 the clearest evidence of a fraud and breach of duty. The DAO
10 law firm, which is the purported alias of Reed Yurchak's law
11 firm --

12 THE COURT: Where are your witnesses?

13 MR. BERG: I'm sorry, Your Honor?

14 THE COURT: Where are your witnesses?

15 MR. BERG: We are relying on documentary evidence,
16 Your Honor.

17 THE COURT: They contest every document. They have a
18 whole -- did you read their response? It's 32 pages. Every
19 single thing you say in your motion they have an explanation
20 for.

21 MR. BERG: They do not, Your Honor. They do not have
22 an explanation for the declaration of Reed Yurchak, which
23 directly refutes their opposition.

24 THE COURT: Okay. Let me hear your argument about
25 Reed Yurchak's --

1 MR. SINGH: Yes, Your Honor.

2 THE COURT: -- declaration.

3 MR. SINGH: Mr. Yurchak's declaration, as Your Honor
4 may imagine, is problematic for several reasons. I don't know
5 if Mr. Yurchak was engaging in some clever mental gymnastics,
6 but it appears to me that he was committing simple perjury.

7 Mr. Yurchak had a long relationship with Mr. Mark
8 Phillips. Mark used Mr. Yurchak to represent him in his
9 earlier criminal action, and thereafter Mark -- Mr. Phillips
10 worked out of Reed Yurchak's office while he was working with
11 the SEC. And it was while he was working at the SEC that
12 plaintiffs first met Mr. Phillips.

13 Now, Mr. Phillips -- sorry -- Mr. Yurchak states in
14 his declaration: "I have not provided services concerning
15 Movement DAO or to Merkaba since March 2022, the date of my law
16 firm's last invoice." Well, we know that's not true. We
17 attached to Mr. Reed's declaration, at Exhibit 30, an
18 October 2022 email stream between Mr. Reed and Mr. Yurchak
19 regarding Mr. Yurchak rendering legal services to Movement DAO
20 specifically in relation to DAO Labs. We also attach
21 Exhibit 29 to Mr. Reed's declaration, the formation documents
22 for DAO Labs, LLC, which was created for Movement DAO by
23 Mr. Yurchak.

24 Mr. Yurchak also writes: "I did not represent
25 Mr. Reed or Mr. Phillips in connection with the Movement DAO

1 projects." Yet, again, we know this is not true, because we
2 attach Mr. Reed's engagement agreement with Mr. Yurchak, dated
3 January 11, 2022.

4 Mr. Yurchak also writes at paragraph 9 in his
5 declaration: At no time did he agree to act as a service
6 provider for Movement DAO. Except we know that Mr. Yurchak
7 agreed to serve as a service provider, because he, among other
8 things, reviewed the GitBook that identified Mr. Yurchak and
9 his firm as a service provider, both by name and by the DAO --

10 THE COURT: How do we know he reviewed it?

11 MR. SINGH: Your Honor, we have emails. We haven't
12 attached them out of deference to counsel's argument that they
13 are privileged. But I do believe that counsel has put that
14 issue -- put that matter at issue here. And I have a sample
15 email --

16 THE COURT: Emails between who and whom?

17 MR. SINGH: Between Mr. Phillips and Mr. Yurchak.

18 THE COURT: Well, what's his argument about privilege
19 there?

20 MR. BERG: Your Honor, our argument on privilege is
21 that Mr. Phillips at the time he was corresponding with
22 Mr. Yurchak was acting as the agent on behalf of Merkaba and
23 plaintiffs.

24 THE COURT: Haven't you put this issue directly -- you
25 just said your number one argument for this injunction is that

1 Mr. Yurchak proves that they're lying. They're saying they
2 have emails that show that what you say about Mr. Yurchak's
3 relationship with Mr. Phillips is totally untrue. How can you
4 block me from seeing those by asserting privilege when that's
5 the central issue you've just raised for your preliminary
6 injunction request?

7 MR. BERG: Absolutely, Your Honor. Happy to answer
8 that.

9 THE COURT: Sure.

10 MR. BERG: Mr. Phillips was acting as an agent on
11 behalf of plaintiffs, and so correspondence between Yurchak and
12 Phillips is covered by plaintiffs' privilege, that the -- it's
13 not putting at issue -- the evidence that Mr. Singh and
14 defendants need to present is evidence of an independent
15 relationship for which there is none. The retainer agreement
16 for Benjamin Reed is not what's at issue here, because it
17 didn't cover the Movement DAO, as Mr. Yurchak explains. The
18 critical piece of evidence that defendants need to present
19 is --

20 THE COURT: Well, the defendants don't need to present
21 any evidence.

22 MR. BERG: To refute Mr. Yurchak's declaration, Your
23 Honor.

24 THE COURT: They just refuted it. They just said
25 everything he said is untrue. They've got a bunch of emails

1 that are later than -- let me just -- where are your witnesses?
2 Where is Mr. Breslow? Where is Mr. -- where are they?

3 MR. BERG: Your Honor --

4 THE COURT: Mr. Gordon?

5 MR. BERG: -- we've --

6 THE COURT: You just want me to accept what they say
7 in their affidavits as true? I can't do that.

8 This is how these preliminary injunction hearings go.
9 You bring your witnesses, I listen to them, I decide whether
10 they're telling the truth or not, then he gets to present his
11 witnesses if you've met your burden initially, and he can
12 present witnesses if he wants to, but he doesn't have to,
13 because it's not his burden. And usually, you know, they have
14 some witnesses too, and I sit there and I listen to them. Then
15 I decide which one I believe, and then I go through the
16 four-factor test, then I decide whether a preliminary
17 injunction, which is an extraordinary remedy, is appropriate,
18 and I rule. But you have no witnesses.

19 MR. BERG: Your Honor, my practice regarding
20 preliminary injunctions is that we can often rely on documents.
21 We're not simply relying --

22 THE COURT: You can if they're not being contested.
23 But there's a whole other narrative here about chats, and
24 votes, and tokens, and permissions, and consents that were
25 given. There's a whole other narrative that your clients

1 probably, maybe, to your mind, can come in here very easily and
2 dispose of. They can sit here and say, Judge, here I am
3 credibly explaining, subject to cross-examination, why none of
4 the things he's explaining as his consent justification is
5 true.

6 And all -- you know, you make a big point in your
7 motion about how he's a convicted felon, he didn't work at the
8 SEC. You said there's no way the SEC would hire a person who
9 is a convicted fraudster like that. And your clients were
10 totally shocked to discover that -- and they didn't discover it
11 until 2023, I think -- totally shocked to discover that he was
12 a convicted felon, had no idea about that.

13 But he lays out in his affidavit that all of that is
14 total baloney. That a bunch -- at a sushi dinner, he told your
15 clients about it. He told your clients about it when you guys
16 were talking about drug use and interactions with law
17 enforcement. I mean, what am I, just supposed to take your
18 clients' word for it through an affidavit? Of course not. So
19 all of that evidence is just a wash. It's gone.

20 MR. BERG: Your Honor, we're not relying solely on
21 affidavits. There are documents --

22 THE COURT: I know, but I'm talking about all those
23 things in the affidavits, that are so critical to your motion,
24 about the level of fraud. I mean, so much of your motion is
25 fraud in the inducement. This guy finagled his way into the

1 company by lying to us about his background, lying to us about
2 his criminal history, and then sort of inveigle against us by
3 coming in and tricking us into giving him tokens and votes and
4 things like that, which there's not a lot of description about
5 how that trickery occurred. Just in the brief, it constantly
6 just says, And then he tricked us into giving him the keys to
7 the mansion, and then he tricked us into giving him the veto
8 power, and then he tricked us into this, and then he tricked us
9 into that.

10 And I figured we were going to come into court today
11 and hear from your clients about just how they were tricked,
12 and I was going to decide whether they're telling me the truth
13 or not. And then maybe if they met their burden, we were going
14 to hear from Mr. Phillips about how he didn't trick anybody.

15 But I can't just say, Well, lawyer says this in the
16 brief, plaintiff says it in his affidavit that he was tricked,
17 I just -- he must have been tricked. That's not how it works.

18 MR. BERG: No, Your Honor, and that's not what we're
19 asking. The question of privilege, if opposing counsel has
20 documentary evidence that says -- that shows that Reed Yurchak
21 is accepting the mantle of DAO law firm, you know, we welcome
22 an in camera presentation to show that to Your Honor.

23 But we've spoken with Mr. Yurchak. He signed a --

24 THE COURT: What he's doing is, which is fair -- I
25 mean, look, I obviously have no idea what's the truth in this

1 case, right?

2 MR. BERG: Of course.

3 THE COURT: This is the first time I'm seeing all of
4 you in court. The preparation for this hearing was the first
5 time I read all of these papers on this case.

6 So here we have your claim with an affidavit from
7 Mr. Yurchak saying, I had nothing to do with these people after
8 a certain date, after March I think of 2022. And I remember
9 reading that in the declaration.

10 Well, but he has emails, which he has attached, which
11 I have read, which, again, I don't know anything about these
12 emails, because I don't have a witness to tell me about them,
13 but they seem to suggest there's a long-standing relationship
14 both before and after March '22. So what do I make of that? I
15 don't know. That's what I need witnesses for, to explain to me
16 why those emails are there and how they're relevant or not
17 relevant to your side of the story. But it's your burden, and
18 it's an extraordinary remedy.

19 And I mean I've never had a contested preliminary
20 injunction hearing without witnesses. I never heard of that.
21 We do these all the time. You come in, you bring your
22 witnesses, they explain the things. Of course they're
23 contested, because the defense has a theory. And the defense's
24 theory either gets blasted by the witnesses or it survives the
25 witnesses. But we don't just go on no witnesses.

1 MR. BERG: Your Honor, I understand, but that has not
2 been my practice, and that's why we opted to go -- to rely on
3 documentary evidence. If you'll permit us leave, we can
4 present witnesses for your consideration, if we have a brief
5 postponement.

6 THE COURT: I have no problem with that.
7 Any objection to that?

8 MR. SINGH: Your Honor, we'd ask that during the
9 duration of the postponement, the TRO order be lifted.

10 THE COURT: I won't grant that request. Because I
11 made the findings of the TRO at the time which I thought were
12 appropriate, but I don't want this to be a long postponement,
13 because I think the defense's concerns are fair ones, and I
14 want us to be able to get to the bottom of this. I don't want
15 to have a full-blown trial, but if I'm going to grant you the
16 extraordinary relief that you're seeking, I want to hear and
17 see from your witnesses, who are telling me that they've been
18 aggrieved.

19 His client is saying all kinds of things about your
20 clients, that they gave away the keys to the house willingly,
21 that they knowingly gave away their vetoes and their tokens,
22 that they voted for those MIPs, that those proposals were known
23 to them, that there was no trickery, that they're
24 sophisticated, and they knew exactly what they were getting
25 into, that they agreed to have the money locked away for

1 six years, and that they then went off and spent \$8 million in
2 Europe, and had all this liquidity problems is because of the
3 financial turn and the banking crisis and the cryptocurrency
4 depreciation, and they had to sell their house. And that this
5 is just another example of them realizing that, hey, they need
6 some money.

7 Now, I don't know if any of that is true, but we got
8 to hear from your clients to be able to evaluate whether that's
9 the true reason we're here or whether it's because their guy is
10 a fraudster, who's trying to do away with all your crypto money
11 that's supposed to belong to these viable organizations that
12 are going to be providing social services for the community.
13 Those are two starkly different narratives, both with
14 evidentiary support through affidavits, both affidavits
15 supported by some documentary evidence, emails and Snapshot
16 posts and things like that. I mean I read all that. But I'm
17 not in a position, based on the black-and-white papers, just to
18 rule on which side I think is -- that would be totally unfair
19 and unjust in my opinion.

20 So I want us to get together on a date soon to have
21 this hearing. And I think we should allocate a whole day for
22 it.

23 So what I'm going to ask you to do is for the two of
24 you get together today, come up with a date that works for you
25 in the next couple of weeks, and give me a few dates, just

1 because I'm busy too, and contact chambers and see if we can
2 work out a date with Brian, who's the law clerk on this case,
3 to try to schedule a full-day hearing on this issue. Okay?

4 MR. BERG: Yes, Your Honor. Your Honor, if I may --

5 THE COURT: Sure.

6 MR. BERG: -- if we could reach out to the Court in a
7 day or so.

8 THE COURT: That's no problem. How about I give you
9 to the end of the week?

10 MR. BERG: Great. That would be perfect.

11 MR. SINGH: Your Honor, one question for
12 clarification.

13 THE COURT: Sure.

14 MR. SINGH: As the Court may have noticed, the issue
15 of privilege is going to be a big one with respect to the
16 upcoming hearing and the presentation of evidence. And I don't
17 take lightly counsel's allegations that there are privileged
18 communications, but we do feel that it is necessary for us to
19 present communications that counsel is going to argue that are
20 privileged in our defense. And so does the Court have any
21 guidance with respect to those communications?

22 THE COURT: Well, he's already proposed that he's okay
23 with me reviewing them in camera, right?

24 MR. BERG: Provided that we have advanced notice of
25 what the documents are so we can provide --

1 THE COURT: Absolutely. You know what? I think this
2 is a good time to mention, we will treat this preliminary
3 injunction hearing like a trial. Because the relief that
4 you're getting, if you get the relief that you're after, is the
5 relief that usually you would get only after a trial. So there
6 needs to be a witness list filed for both sides, there needs to
7 be an exhibit list filed for both sides. If there are
8 stipulations that the parties think make sense, in order to
9 streamline the hearing, which I hope that you do come to some
10 stipulations, maybe, 20, 30, 40 facts that you think we don't
11 need to hear a witness about, and we don't need to waste court
12 time on if there's not going to be any cross-examination on
13 that issue, let's get some stipulations drafted. So let's have
14 stipulations. Let's have an exhibit list. Let's have a
15 witness list.

16 And then you'll show each other your exhibits a couple
17 weeks -- a week before the hearing, let's say, and then let's
18 say you have a hundred exhibits, you show them to the defense
19 lawyer. The defense lawyer says, I'm okay with 90 of them. I
20 have a hearsay objection to these five, I have a relevance
21 objection to these three, I have a privilege objection to the
22 last two. Well, that way I know when we get to the hearing,
23 the first 90 we could just move them right into evidence, you
24 don't need any foundational questions, we don't need to argue
25 about that, they're in evidence, you can do with them what you

1 will. The other ten, we'll argue about it when it comes to
2 that point on the hearsay, relevance, privilege objections, as
3 the case may be.

4 So, yes, to answer your question directly. Any emails
5 that you will want to use will have to be on an exhibit list
6 and will need to be shown to him prior to the hearing. And
7 you'll need to get his position on it, and you'll need to then,
8 on the exhibit list that you file, tell us whether he objects
9 to those exhibits or not. So each side, in other words, will
10 file a witness list and an exhibit list. And the exhibit list
11 will say, Here's my exhibit, Exhibit 1, Snapshot picture, and
12 it's unobjected to. Here's Exhibit 2, email between
13 Mr. Phillips and Mr. Yurchak, and the objection is hearsay.
14 Exhibit 3, so on and so forth.

15 And each side will then have total clarity and
16 transparency about what the other side is going to be doing at
17 the hearing, what they're going to be introducing, and what the
18 other side's objections are to their evidence. I'll rule on
19 the objections at the hearing. Of course, if you want me to
20 review something in camera, that just means that we seal the
21 courtroom, which we can easily do.

22 Any questions about all that?

23 MR. BERG: Yes, Your Honor.

24 THE COURT: Go ahead.

25 MR. BERG: I think we're maybe putting the cart before

1 the horse on the privilege issue. The concern that my clients
2 have is that Mr. Phillips is not the holder of the privilege
3 when he is communicating with Mr Yurchak.

4 THE COURT: Well, they're not the holder of the
5 privilege either, right?

6 MR. BERG: Well, there's Merkaba, which is the entity
7 they formed to be sort of the initiating --

8 THE COURT: Didn't that agreement end in January or
9 February of '22?

10 MR. BERG: I'm sorry, Your Honor?

11 THE COURT: The independent contractor agreement, the
12 IC agreement with Merkaba?

13 MR. BERG: No, Your Honor. I'm talking about Merkaba
14 the entity and its engagement with Mr. Yurchak.

15 THE COURT: Oh, its engagement with Mr. Yurchak.
16 Okay.

17 MR. BERG: So that is a holder of the privilege, and
18 plaintiffs are also holders of a privilege.

19 THE COURT: But that's what I'm saying, is Merkaba's
20 independent contractor agreement with Mr. Phillips, correct,
21 ended on -- what is it February of 2022?

22 MR. SINGH: Your Honor, the Merkaba agreement ended
23 prior to the Ryan Breslow independent contractor --

24 THE COURT: Which is what -- give me a date.

25 MR. SINGH: So Ryan Breslow's ended on January 2nd,

1 Merkaba ended prior to December of 2021.

2 THE COURT: Okay. And when are these emails that
3 you're talking about?

4 MR. SINGH: There are some from December of 2021
5 concerning the GitBook, and there are many thereafter through
6 2022.

7 THE COURT: So to his point, what's the privilege by
8 Merkaba after January of 2022?

9 MR. BERG: It's the -- Merkaba and the plaintiffs
10 represent the Movement DAO project.

11 THE COURT: The Movement DAO he says is a separate
12 entity that has its own rights.

13 MR. BERG: Could not be before August 2022, which was
14 the date it was formed.

15 THE COURT: Okay.

16 MR. BERG: Okay. So my point is, if Mr. Phillips was
17 interacting with Mr. Yurchak on behalf of either Merkaba or
18 plaintiffs, within the scope of the representation of Yurchak
19 to plaintiffs, those materials are privileged, and the
20 privilege belongs to plaintiffs or Merkaba. What concerns me
21 is that defendants are viewing privileged materials, held by my
22 clients, that they do not have any rights to.

23 THE COURT: Oh, you're saying they're viewing them
24 because they --

25 MR. BERG: They're using them to pursue this

1 litigation.

2 THE COURT: But how can you object to their viewing it
3 when Mr. Phillips is on the emails?

4 MR. BERG: Because he has been stripped of the rights
5 to use privileged information. He no longer has authority by
6 plaintiffs or Merkaba.

7 THE COURT: But the emails were shared with him in the
8 first instance.

9 MR. BERG: Well, again, it's difficult to know what
10 emails --

11 THE COURT: That's why I'm saying it's hard for me to
12 rule on them. You wanted me to talk about putting the cart
13 before the horse, but I don't even know the dates of the
14 emails, I don't know what the emails say, I don't know who
15 they're between. So we're just really talking in the abstract
16 here. I gather there's a privilege issue that we're going to
17 have to address at some point, and I think that's fair. But if
18 you're asking me to rule on that now, I don't know how I can do
19 that.

20 MR. BERG: Of course not, Your Honor. My -- unless
21 you're suggesting that because Mr. Phillips was an agent -- or
22 was on emails at one point, all privilege is waived as to
23 him --

24 THE COURT: I'm not suggesting anything. I'm just
25 saying -- all I was saying, which I asked you whether you had

1 any questions about, was you're going to have to file a witness
2 list listing your witnesses, so is he, you're going to have to
3 file an exhibit list listing your exhibits, so is he, you're
4 going to show each other your exhibits, and then you're going
5 to tell the other side which ones you object to and on what
6 ground.

7 MR. BERG: Right.

8 THE COURT: And then each of you will file a complete
9 exhibit list with your exhibits and the other side's objections
10 or nonobjections noted on that list. At that point, we can
11 have our hearing, you call whatever witnesses you want, he can
12 cross-examine. Then if he wants, but doesn't have to, he can
13 call witnesses, you can cross-examine, and then I will rule.

14 MR. BERG: My point, Your Honor, is I think it might
15 be beneficial to the Court if we briefed the privilege issue.

16 THE COURT: The problem with that is that you've got a
17 TRO pending against them right now.

18 MR. BERG: Yes.

19 THE COURT: They didn't get a chance, really, at this
20 point, to defend against that in a hearing.

21 MR. BERG: Um-hum.

22 THE COURT: And if there's briefing, that's going to
23 take a couple months. You're going to have to spend a few
24 weeks briefing your brief, then he's going to get a couple
25 weeks to respond, then you're going to get a week to reply,

1 then I'm going to have to take a few weeks to read it and rule
2 on it and do all the research. In the meantime, he's saying
3 that his clients are being aggrieved. Now, I get your point
4 that that's all bogus, but I don't know that standing where I
5 am right now.

6 MR. BERG: Our position, Your Honor, is once -- even
7 if you had access to privileged information as an agent --
8 let's talk about a paralegal at a law firm, for example, and
9 that paralegal leaves the law firm, no longer works there, the
10 paralegal is no longer entitled to view documents that they may
11 have been copied on. Right? Using that analogy, our concern
12 here is, defendants are in the process of using privileged
13 information held by my clients, and they are not -- they're --
14 shouldn't be invading that privilege.

15 THE COURT: I understood that part. But he's saying,
16 imagine that the paralegal leaves the law firm, and then months
17 later she retains the lawyer to help her with a project that
18 she's now running on her own and owes you no privilege, because
19 it's post her departure from your relationship. That's what
20 he's suggesting. I don't know whether that's true or not. And
21 my point is, I'm not in a position to adjudicate that question,
22 because I have no idea about any of the specifics on the emails
23 that you're talking about.

24 What I'm saying to you is, each side will show each
25 other the exhibits. You will then tell me which ones you

1 object to for hearsay or any other reason -- hopefully not
2 hearsay, because you know that's permissible in this hearing --
3 but if you think it's unreliable for some extreme reason, you
4 raise it. If you want to raise a relevancy objection, you
5 raise it. If you want to raise a privilege objection, you
6 raise it. And then as to those documents that are privileged,
7 if you want to file a motion saying he should not be allowed to
8 read into the record those privileged communications, either in
9 camera or not, you're welcome to file a motion, and he can file
10 a short response.

11 But I just want to tell you that it should happen
12 quickly, because I want this hearing to happen sooner rather
13 than later.

14 MR. BERG: Yes. And my last point, Your Honor, in
15 that circumstance, doesn't that eviscerate the privilege? If
16 you ultimately conclude that actually, you know what, Mark
17 Phillips was acting as an agent under the umbrella of
18 plaintiffs' privilege, and what he has done is he's prepared an
19 entire defense using his access to privileged information that
20 he shouldn't be entitled to.

21 THE COURT: Then what?

22 MR. BERG: That has invaded my clients' privilege.

23 THE COURT: No, it hasn't. Federal judges review
24 privileged materials all the time in response to objections to
25 the privilege classification.

1 MR. BERG: Of course, Your Honor. But defendants are
2 invading it, not Your Honor.

3 THE COURT: They've already -- according to you,
4 they've already invaded it. They know what those documents
5 are, they have them, right?

6 MR. BERG: Yes, I think the --

7 THE COURT: They're on their phones, they're in their
8 email accounts.

9 MR. BERG: The appropriate relief is not --

10 THE COURT: Destroy their email accounts?

11 MR. BERG: Destroy the privileged information or
12 return it.

13 THE COURT: I don't know if it's privileged yet.

14 MR. BERG: Exactly. That's why it is difficult to
15 make these determinations in a vacuum without briefing on
16 whether -- because if it is privileged, they shouldn't be able
17 to use it.

18 THE COURT: Did he not -- are you not listening to the
19 words that are coming out of my mouth?

20 MR. BERG: I am, Your Honor.

21 THE COURT: I specifically said that I will adjudicate
22 the privilege questions at or before the hearing.

23 MR. BERG: I understand.

24 THE COURT: But I just don't want it to take
25 six months, because you've got what he claims are

1 Movement DAO's and his assets locked up pursuant to the TRO,
2 which is unfair.

3 I'm not suggesting we're going to let him put in
4 documents that I ultimately decide are privileged. I'm
5 suggesting that we need to move forward on this case in order
6 to decide whether they're privileged in the context of getting
7 this preliminary injunction adjudicated. Does that make sense?

8 MR. BERG: Yes, Your Honor.

9 THE COURT: Any questions from you about what we're
10 doing?

11 MR. SINGH: Your Honor, one scheduling question. How
12 far in advance of the hearing would Your Honor like the witness
13 list and the exhibit list?

14 THE COURT: Let's say one week. I think one week. I
15 think one week will give everybody enough time to say --
16 hopefully you all can work out some of these -- have you had a
17 meet-and-confer about the privilege issues before?

18 MR. BERG: Not a substantive one, Your Honor.

19 THE COURT: All right. So this is not even something
20 that's ripe for review at all, this privilege question.

21 How many documents are you talking about that you
22 think you would want to use that he has a privilege concern
23 about?

24 MR. SINGH: Your Honor, I think it's about a dozen.

25 THE COURT: A dozen. Okay. Well, I think you got to

1 show him those documents sooner rather than later. And we've
2 got to get moving on this thing. Because I don't want your
3 clients to be sitting on a TRO unjustly, if that's how it ends
4 up turning out. But at the same time, to his point, I don't
5 want to move forward unless we're all prepared to have a
6 preliminary injunction hearing at which we will review all of
7 the evidence that's appropriate to review from both sides.

8 So I'd like for you all to confer today and tomorrow,
9 if you can, on a date, and to work on a schedule for showing
10 each other your exhibits, and maybe getting some quick briefing
11 on some of those exhibits, and maybe even some stipulations.
12 Maybe you show them to him, and you realize -- because this
13 happens all the time -- actually, there's only eight that we
14 want to use, or nine. And then he looks at them and says,
15 well, maybe two of them I'm fine with, so there's really only
16 six or seven. You get my point. Narrow the issues, especially
17 when we get to witnesses and stipulated facts, please. Do your
18 homework in advance. Don't come here with a witness that then
19 the other side's, I don't need to cross-examine this witness, I
20 agree with everything he said.

21 So let's just be clear that we're showing each other
22 our witnesses, showing each other our evidence, so that we can
23 present only the streamlined issues that require judicial
24 intervention. Okay?

25 MR. BERG: One last issue, Your Honor.

1 THE COURT: Sure.

2 MR. BERG: I wanted to use this time to address the
3 notice of compliance that defendants filed.

4 THE COURT: Sure.

5 MR. BERG: We still do not have an accounting for what
6 defendants have done with the cryptocurrency they converted
7 into cash. The notice was very, very vague on that point.

8 THE COURT: I agree with that.

9 MR. BERG: And we also have presented, in two
10 different briefs, evidence that suggests that transfers were
11 fraudulent to developers and vendors. Again, no response to
12 the notice of compliance about that. So our view is that good
13 cause for not following the TRO has not been shown, and we
14 wanted to raise that issue with you here.

15 THE COURT: All right. So what happened to the cash?

16 MR. SINGH: Your Honor, I don't have that accounting
17 in front of me, but I know that some of it was used to pay
18 common business expenses. DAO Labs is a functioning LLC, and
19 it has business expenses.

20 Some of the cash was used to pay for attorneys' fees
21 and for -- pursuant to indemnification --

22 THE COURT: Attorneys' fees to whom?

23 MR. SINGH: To my firm, Your Honor, and I believe
24 another lawyer as well.

25 THE COURT: What's the other lawyer?

1 MR. SINGH: The other lawyer's name is Daniel
2 Resnick-Neillie. He's a California barred attorney, and he's
3 also assumed the DAO-lawfirm.eth address.

4 THE COURT: Okay. And what is his role in this case,
5 if any?

6 MR. SINGH: He is counsel to Mr. Mark Phillips
7 individually.

8 THE COURT: As part of this litigation or just
9 generally speaking?

10 MR. SINGH: Generally speaking, and he's also
11 consulting in relation to this litigation.

12 THE COURT: Okay. And so what are the -- do we know
13 what the total amounts of those lawyer payments are?

14 MR. SINGH: I do not know off the top of my head, Your
15 Honor.

16 THE COURT: How much is missing in cash on the
17 accounting to your view?

18 MR. BERG: I believe it's in the tune of two million.

19 THE COURT: You think it's about two million what you
20 were paid and Mr. Neillie were paid?

21 MR. SINGH: Far less than that, Your Honor.

22 THE COURT: Unfortunately for the two of you. So that
23 doesn't answer the question.

24 MR. SINGH: I'm happy to go back to my clients and
25 provide a cash accounting.

1 THE COURT: I'm concerned about this. Tell your
2 clients that I'm concerned about it.

3 MR. SINGH: Will do, Your Honor.

4 THE COURT: And if -- when we get to the hearing --
5 this is what I said in my paperless order -- I thought this was
6 going to happen today, but there are no witnesses -- when we
7 get to the hearing, I am going to consider sanctioning your
8 clients if I find that the answers to these questions, which
9 were clearly raised in their requests, are not answered to my
10 satisfaction. Was I clear about that?

11 MR. SINGH: Yes, Your Honor, perfectly clear.

12 THE COURT: And I think that, you know, they can show
13 up or not, but if they don't show up at the preliminary
14 injunction hearing when we have it, then we're only going to
15 have their side of the story on these things, unless you have a
16 very detailed accounting as to where these monies were spent.

17 I assume you think that the DAO Labs payments is just
18 a front.

19 MR. BERG: This is the first time I've heard of it.

20 THE COURT: Okay. So you don't have a view of it one
21 way or the other.

22 Well, I think that in order to streamline that issue,
23 because I can see already it's going to be a big issue at the
24 time of the preliminary injunction hearing, you're going to
25 want to show him all of these accountings with respect to where

1 that money was spent, whether it's to the lawyers, whether it's
2 to DAO Labs business expenses, or whatever else so that we can
3 all be on the same page about where that money went.

4 I do not want to find that after the TRO was entered,
5 money was disbursed in violation of the TRO. That would be
6 very bad for your client.

7 MR. SINGH: Yes, Your Honor. My clear instructions to
8 the clients were to not move those funds --

9 THE COURT: I believe that. That's not what I'm
10 suggesting. But we need to be clear that they're not doing
11 that despite your advice.

12 MR. SINGH: Understood, Your Honor.

13 THE COURT: Okay. Anything else, then, from the
14 plaintiff?

15 MR. BERG: One question, Your Honor. The nature of
16 some of the witnesses in this cryptocurrency space, they
17 operate using aliases, and we have found that it's been
18 difficult to get these folks to sign declarations and perhaps
19 appear as witnesses, because they don't want to reveal their
20 identities to the public. If -- would the Court be amenable to
21 sealing the courtroom when those witnesses take the stand?

22 THE COURT: I don't have a problem with that unless
23 you have a problem with it.

24 MR. SINGH: No problem with that, Your Honor.

25 THE COURT: All right. Who are you talking about? I

1 meant that I wanted to hear from Mr. Breslow and maybe
2 Mr. Gordon and maybe Mr. Phillips and Mr. Reed, but if you
3 have -- and maybe Mr. Yurchak, but who --

4 MR. BERG: So, for example, Jango.eth, he is a
5 recipient of \$10,000 -- 10,000 DAI for his work on the
6 Movement DAO project. He's never worked on the Movement DAO
7 project.

8 THE COURT: Understood. And you know who he is, but
9 he doesn't want the world to know who he is.

10 MR. BERG: Correct.

11 THE COURT: Got it.

12 MR. BERG: I actually don't know who he is.

13 THE COURT: Oh, okay.

14 MR. BERG: But my clients have -- do know who he is.
15 They've spoken to him. And there are good reasons for keeping
16 an alias like this. So if it's permissible by the Court,
17 that's how we'd like to approach it.

18 THE COURT: That's no problem with me.

19 MR. BERG: In terms of in the future, if we have
20 affidavits, it would be helpful to get participation from some
21 of these witnesses, if we could have the Court's assurance that
22 those would be allowed to be filed under seal as well.

23 THE COURT: Well, you have got to file a motion to
24 file something under seal.

25 MR. BERG: Of course, of course. I just wanted to

1 preview for the Court that -- basically, I want to preview for
2 the Court that this is the type of request that might be coming
3 down the pike. Witnesses are not willing to provide
4 declarations without that type of assurance.

5 THE COURT: I appreciate that. I didn't know that. I
6 appreciate that. But I just want to be clear. I'm not giving
7 a blanket under seal order right now.

8 MR. BERG: Of course.

9 THE COURT: The way CM/ECF works, as you probably
10 know, is in order to get access to file something under seal --
11 and, actually, our Court just voted on this, so you may not be
12 aware of it -- you will no longer have permission to file
13 something under seal unless it is precipitated by a motion to
14 file under seal and an order granting your permission to file
15 that specific document under seal. So even if I wanted to give
16 you access right now, I couldn't. But any motion that you want
17 to file under seal, you'll need to confer with them, I assume
18 they won't have a problem with that, and you'll file an
19 unopposed motion to file the motion under seal or the affidavit
20 under seal, it will be granted, and then CM/ECF will give you
21 access to that filing.

22 MR. BERG: Thank you, Your Honor.

23 THE COURT: Anything else from the plaintiff?

24 MR. BERG: No, sir.

25 THE COURT: Anything else from the defense?

1 MR. SINGH: No, Your Honor.

2 THE COURT: All right, folks. So you got your
3 instructions. Any questions about that, please don't hesitate
4 to call. But by the end of the week, please call chambers or
5 email chambers and give us some dates that work for you in the
6 next -- I guess probably in the next month, let's say, and
7 we'll go from there. Okay?

8 MR. BERG: Thank you, Your Honor.

9 THE COURT: All right, folks. Have a good day.

10 MR. SINGH: Thank you, Your Honor.

11 *(The Judge exited the courtroom)*

12 *(Proceedings concluded at 4:08 p.m.)*

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18 C E R T I F I C A T E

19 I hereby certify that pursuant to Section 753,
20 Title 28, United States Code, the foregoing is a true and
21 correct transcript from the record of proceedings in the
22 above-entitled matter.

23 /s/Francine C. Salopek 3-30-2023
24 Francine C. Salopek, RMR-CRR Date
25 Official Court Reporter

<p>MR. BERG: [70] MR. SINGH: [28] ROOM CLERK: [1] 3/5 THE COURT: [96]</p> <p>\$</p> <p>\$10,000 [1] 30/5 \$8 [1] 13/1 \$8 million [1] 13/1</p> <p>'</p> <p>'22 [2] 11/14 17/9</p> <p>/</p> <p>/s/Francine [1] 32/23</p> <p>1</p> <p>10,000 [1] 30/5 11 [1] 6/3 12-4 [1] 2/10 177 [1] 2/6</p> <p>2</p> <p>20 [1] 15/10 2021 [2] 18/1 18/4 2022 [8] 2023 [4] 1/7 3/1 9/11 32/23 20727 [1] 3/5 2121 [1] 2/3 23-20727 [1] 3/5 23-20727-CIV-RKA [1] 1/4 28 [3] 1/7 3/1 32/20 29 [1] 5/21 2nd [1] 17/25</p> <p>3</p> <p>3-30-2023 [1] 32/23 30 [2] 5/17 15/10 301-3276 [1] 2/11 305 [1] 2/11 30th [1] 2/4 32 [1] 4/18 3276 [1] 2/11 33128 [1] 2/10 3:32 [2] 1/8 3/1</p> <p>4</p> <p>40 [1] 15/10 400 [1] 2/10 4:08 [1] 32/12</p> <p>7</p> <p>700 [1] 2/6 753 [1] 32/19</p> <p>9</p> <p>90 [2] 15/19 15/23 90067 [1] 2/4 94108 [1] 2/7</p> <p>A</p> <p>above [1] 32/22</p>	<p>above-entitled [1] 32/22 Absolutely [2] 7/7 15/1 abstract [1] 19/15 accept [1] 8/6 accepting [1] 10/21 access [5] 21/7 22/19 31/10 31/16 31/21 according [1] 23/3 accounting [5] 26/5 26/16 27/17 27/25 28/16 accountings [1] 28/25 accounts [2] 23/8 23/10 act [1] 6/5 acting [3] 6/22 7/10 22/17 action [1] 5/9 address [3] 19/17 26/2 27/3 adjudicate [2] 21/21 23/21 adjudicated [1] 24/7 advance [2] 24/12 25/18 advanced [1] 14/24 advice [1] 29/11 affidavit [5] 9/13 9/18 10/16 11/6 31/19 affidavits [6] 8/7 9/21 9/23 13/14 13/14 30/20 afternoon [4] 3/11 3/12 3/13 3/15 agent [5] 6/22 7/10 19/21 21/7 22/17 agents [1] 4/4 aggrieved [2] 12/18 21/3 agree [3] 6/5 25/20 26/8 agreement [7] al [3] 1/7 1/10 3/6 al., [1] 3/6 alias [2] 4/10 30/16 aliases [1] 29/17 allegations [1] 14/17 allocate [1] 13/21 allowed [2] 22/7 30/22 Almost [1] 3/22 Altman [1] 1/15 amenable [1] 29/20 amounts [1] 27/13 analogy [1] 21/11 Angeles [1] 2/4 Annaguey [1] 2/3 answer [3] 7/7 16/4 27/23 answers [1] 28/8 appearances [2] 2/1 3/7 application [1] 3/21 appreciate [2] 31/5 31/6 approach [1] 30/17 argue [3] 14/19 15/24 16/1 argument [6] 4/5 4/24 6/12 6/18 6/20 6/25 asserting [1] 7/4 assets [1] 24/1 assume [2] 28/17 31/17 assumed [1] 27/3 assurance [2] 30/21 31/4 attach [2] 5/20 6/2 attached [3] 5/17 6/12 11/10 attorney [1] 27/2 attorneys' [2] 26/20 26/22</p>	<p>August [1] 18/13 authority [1] 19/5 Avenue [2] 2/3 2/10 aware [1] 31/12</p> <p>B</p> <p>background [1] 10/1 baloney [1] 9/14 banking [1] 13/3 barred [1] 27/2 believe [5] 6/13 8/15 26/23 27/18 29/9 belong [1] 13/11 belongs [1] 18/20 Ben [1] 3/14 beneficial [1] 20/15 Benjamin [1] 7/16 Berg [2] 2/2 3/9 black [1] 13/17 blanket [1] 31/7 blasted [1] 11/24 block [1] 7/4 blown [1] 12/15 bogus [1] 21/4 bottom [1] 12/14 breach [1] 4/9 BRESLOW [6] 1/7 3/5 3/10 8/2 17/23 30/1 Breslow's [1] 17/25 Brian [1] 14/2 brief [4] 10/5 10/16 12/4 20/24 briefed [1] 20/15 briefing [5] 4/6 20/22 20/24 23/15 25/10 briefs [1] 26/10 bunch [2] 7/25 9/14 burden [5] 3/19 8/11 8/13 10/13 11/17 business [3] 26/18 26/19 29/2 busy [1] 14/1</p> <p>C</p> <p>CA [2] 2/4 2/7 California [1] 27/2 call [5] 3/4 20/11 20/13 32/4 32/4 Calling [1] 3/5 camera [4] 10/22 14/23 16/20 22/9 cart [2] 16/25 19/12 cash [5] 26/7 26/15 26/20 27/16 27/25 cause [1] 26/13 central [1] 7/5 certify [1] 32/19 chambers [3] 14/1 32/4 32/5 chance [1] 20/19 chats [1] 8/23 Christopher [2] 2/2 3/9 Cipollone [1] 2/2 circumstance [1] 22/15 CIV [1] 1/4 claim [1] 11/6 claims [1] 23/25 clarification [1] 14/12</p>
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